

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

DELMONT YUSIF WAQIA,

Charging Party,

v.

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS LOCAL 55,

Respondent.

Case No. SF-CO-38-M

Request for Reconsideration
PERB Decision No. 1621-M

PERB Decision No. 1621a-M

June 17, 2004

Appearances: Delmont Yusif Waqia, on his own behalf; Davis, Cowell & Bowe, by W. David Holsberry, Attorney, for International Association of Firefighters Local 55.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Delmont Yusif Waqia (Waqia) of the Board's decision in International Association of Firefighters Local 55 (Waqia) (2004) PERB Decision No. 1621-M (IAFF). The unfair practice charge had alleged that the International Association of Firefighters Local 55 (Local 55) violated the Meyers-Milias-Brown Act (MMBA)¹ by failing to take a grievance to arbitration. In IAFF, the Board found that, under the circumstances in that case, Local 55 was not obliged to pursue Waqia's grievance to arbitration and therefore did not breach the duty of fair representation.

After review of Waqia's request for reconsideration and Local 55's response, the Board denies Waqia's request for the reasons expressed below.

¹MMBA is codified at Government Code section 3500, et seq.

BACKGROUND

In his request for reconsideration, Waqia essentially reargues the same issues that were raised in his appeal. He contends that Local 55 made a determination not to process his grievance at the same time that the City of Oakland (City) had already accepted his grievance and in the process, identified the weaknesses in his case to the City. He likens Local 55's conduct to a defense attorney telling the prosecution how to handle its case. According to Waqia, this analogy essentially summarizes his charge.

Waqia alleges that the Board misstated certain facts in the decision. For example, he claims that the Board's finding that he did not wish to return to work after his leave and so hired a private attorney to negotiate a retirement package is inaccurate. He states instead that he did not need an attorney to retire, only to negotiate a decent severance package. Waqia states that Chief, Gerald Simon directed Deputy Chief, Ronald Carter (Carter) to deliver the letter ordering Waqia to return to work; Carter had no authority to issue that directive as implied by the decision. Another fact Waqia disputes is that Local 55 Representative Brad Pieraldi stated during conversations with Waqia that the timeliness of the grievance was a potential problem, not an actual problem, as stated in the Board's decision. Rather, Waqia asserts, it was not the expressed concern of Local 55, but of Local 55's Attorney, David Holsberry (Holsberry), that the grievance was untimely and so would lose in arbitration, that persuaded Local 55 not to proceed to arbitration. Waqia questions Holsberry's rationale for estimating less than a 50 percent chance of prevailing in arbitration. Waqia explains that the Board appears to misunderstand that his travel to Mecca was not as a tourist, but as a religious pilgrim, with full notice to his supervisors. Waqia states that some of the facts supporting the decision in IAFF are irrelevant.

Some of the points made by Waqia are difficult to understand. However, Waqia makes very clear his perception that Local 55 did not take his case to arbitration because of racial and religious bigotry.

Local 55 responded that Waqia did not fulfill the requirements of PERB Regulation 32410(a)², i.e., show the extraordinary circumstances necessary to warrant reconsideration. Waqia is simply rearguing his case. He does not provide facts showing that his grievance was timely or that he “narrowly” missed the deadline. In fact, Waqia missed the deadline by more than a month. The memorandum of understanding (MOU) specifically states that failure to follow the timelines “shall nullify the grievance.” (MOU Section 10.4.) Under these circumstances, Local 55 is not required to pursue his grievance. (Service Employees International Union, Local 99, AFL-CIO (Sponza) (1984) PERB Decision No. 402.) In addition, the City argues that it is not required to specify its reasons for rejecting the grievance at the first three steps and typically procedural issues, such as timeliness, are left to an arbitrator. Consequently, nothing would have prevented the City from raising that defense if the matter had proceeded to arbitration. Local 55 asserts that it made a rational and honest judgment about the untimeliness of Waqia’s grievance being fatal to its success. There is no evidence that this judgment was not made in good faith.

DISCUSSION

The basis for reconsideration is set forth in PERB Regulation 32410, which provides, in pertinent part:

(a) The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

In this case, Waqia merely reargues the issues raised on appeal. His dispute with the findings in the Board's decision in IAFF involve some alleged minor inaccuracies of fact. However, it is undisputed that the grievance was untimely through Waqia's own delay in contacting Local 55 and that the MOU provides for nullification of an untimely grievance. Waqia did not provide any specific facts showing that Local 55's attorney made other than a reasoned judgment that the grievance would have little chance of prevailing in arbitration on procedural grounds. He has not presented any new evidence and provided nothing supported by declaration as required by PERB Regulation 32410(a). Waqia does, for the first time, make a serious accusation that Local 55's true reason for not arbitrating his grievance was due to racial and religious bigotry. This allegation is stated in conclusory terms, unsupported by facts or evidence.

In conclusion, we find that Waqia has failed to meet the limited grounds for reconsideration under PERB Regulation 32410.

ORDER

Delmont Yusif Waqia's request for reconsideration of the Board's decision in International Association of Firefighters Local 55 (Waqia) (2004) PERB Decision No. 1621-M is hereby DENIED.

Chairman Duncan and Member Neima joined in this Decision.